



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: May 3, 2013

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary *Ben Brancel*
John Petty, Administrator, Agricultural Resource Management Division *John Petty*

SUBJECT: Wisconsin Farmland Preservation Program, Wis. Admin. Code Ch. ATCP 49 (NEW)

PRESENTED BY: Keith Foye and Alison Volk, Agricultural Resource Management Division

REQUESTED ACTION:

At the May 14, 2013, Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve the final draft rule related to the farmland preservation program.

SUMMARY:

Background

Wisconsin's Farmland Preservation Program (FPP), Ch. 91, Stats., was repealed and recreated under 2009 Wis. Act 28. Chapter 91, Stats., was updated to acknowledge the growing pressures on farmland across the state and to curb the increasing conversion of farmland out of agricultural use.

The farmland preservation law requires all counties to update their farmland preservation plans before January 1, 2016. The farmland preservation planning process ensures that local governments evaluate the agricultural land within their boundaries and consider the role that agriculture plays in their local economy. Counties must submit farmland preservation plans to DATCP for certification. In order to be certified by the department, the plan must meet certain requirements under ch. 91, Stats. Once certified, land that is identified as part of a farmland preservation area is then eligible for other parts of the farmland preservation program.

One such part of the farmland preservation program is farmland preservation zoning. Local governments may choose to adopt farmland preservation zoning ordinances to protect farmland. Zoning ordinances must be updated and submitted to the department for certification. Similar to farmland preservation plans, zoning ordinances must be submitted to the department for certification. To be certified, the ordinance must meet certain requirements under ch. 91, Stats.

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The certification process ensures that only compatible uses are allowed in the farmland preservation district to limit pressures on active agriculture created by the presence of incompatible uses. Once certified, landowners are eligible to claim farmland preservation tax credits.

Another component of the farmland preservation program is the farmland preservation agreement. Under ch. 91., Stats., any new agreement must be located in a landowner-initiated and state-designated Agricultural Enterprise Area (AEA). Landowners with farmland preservation agreements are eligible to collect farmland preservation tax credits. By clustering agreements in areas that are primarily devoted to agricultural use, farmland can be better protected under the recognition that a concentration of agriculture provides landowners with the confidence that the surrounding land will remain in agriculture. This confidence encourages landowners to not only continue farming but to make additional investments in their agricultural operations as well.

Rule Content

General

This rule does all of the following:

- Creates ch. ATCP 49.
- Adds to definitions listed under s. 91.01, Stats., and clarifies certain terms in ch. 91.
- Specifies the application content and process for receiving certification of farmland preservation plans and ordinances.
- Specifies types of ordinance amendments for which certification is required under s. 91.36 (8) (b) 3, Stats.
- Authorizes additional uses allowed in a farmland preservation zoning district.
- Specifies when the department may deny an application for a farmland preservation agreement.

Definitions

This rule:

- Makes clear the types of uses that may be listed by a political subdivision as accessory uses and agriculture-related uses.
- Defines several terms including crops and forest management.
- Adds a definition of base farm tract to enable political subdivisions flexibility in administering this density restriction if they choose to utilize it.

Farmland Preservation Planning

This rule:

- Reiterates the statutory requirement that, unless a county obtains certification of a new farmland preservation plan by December 31 of the year following the expiration date of the county plan, the department may withdraw certification of any zoning ordinances within the county.
- Explains the circumstances under which a county may receive an extension to the expiration of their farmland preservation plan to facilitate coordination with other planning and zoning efforts that may be occurring in the county.
- Reiterates the statutory requirement that any amendment to a certified farmland preservation plan must be submitted to the department for certification.
- Provides that the rationale used for identifying the farmland preservation area must be based on objective criteria. Describes the relationship between the farmland preservation plan and any county comprehensive plan.
- Provides technical specifications for the farmland preservation plan map and states that the county must provide the department with the data used to create the map.

Farmland Preservation Zoning

This rule:

- Provides that nonfarm residences existing at the time an ordinance is certified may be considered permitted uses rather than prior nonconforming uses.
- Authorizes single-family and duplex nonfarm dwellings as conditional uses subject to density restrictions that are as restrictive as the density standards under ch. 91, Stats.
- Clarifies the statutory provision that an ordinance certification expires according to the statutory schedule in s. 91.34, Stats., and a political subdivision has until December 31 of the year following the expiration date to have its ordinance certified by the department to prevent landowners from losing eligibility to claim farmland preservation tax credits.
- Clarifies the statutory provision which authorizes a local government to request an extension to the expiration of its farmland preservation zoning ordinance to facilitate coordination with other planning and zoning efforts that may be occurring in the town or county.
- Describes the relationship between a political subdivision's farmland preservation zoning ordinance and the county's farmland preservation plan.
- Provides technical specifications for the farmland preservation zoning map and states that the political subdivision must provide the department with the data used to create the map.
- Specifies that the department may withdraw certification of an ordinance if the county farmland preservation plan expires or if the political subdivision adopts an ordinance that fails to comply with ch. 91, Stats.

- Specifies when an amendment to a farmland preservation zoning ordinance must be submitted to the department for certification.

Farmland Preservation Agreements

This rule:

- Provides that the department may deny a farmland preservation agreement application if the department determines that lands to be excluded from the proposed agreement are withheld for purposes that conflict with the goals of the Agricultural Enterprise Area, or are withheld for purposes that will likely impair or limit agricultural use on other lands in the Agricultural Enterprise Area or lands proposed for inclusion under a farmland preservation agreement.

Public Hearings

DATCP held four public hearings on the original rule proposal as listed below:

- February 14, 2013, in Appleton
- February 21, 2013, in Eau Claire
- February 26, 2013, in Wausau
- February 28, 2013, in Madison

DATCP accepted written comments until March 15, 2013. A total of 49 people attended and registered at the two hearings. A summary of the comments received is attached.

Seven of the 27 comments received were in support of the rule and the goals of farmland preservation. Two comments opposed the rule while three opposed specific parts. Four comments favored parts of the rule and opposed parts. Two comments were unrelated to the rule and three made technical suggestions to the rule language. The parts of the rule to which commenters objected were the provision that requires the rationale identifying the farmland preservation plan area to be primarily related to the characteristics of the land itself and not primarily based on individual landowner preference, and the specification that 80% of the land planned for farmland preservation should be zoned for farmland preservation in a certified farmland preservation zoning ordinance.

The department also received the following comments regarding the rule and requesting amendment of the rule language:

- Refine the language regarding the farmland preservation agreement application so as not to dissuade landowners from applying for an agreement.
- Allow local governments to craft their own definition of contiguous, giving them the option of either ending at or crossing over a river, stream, section line or road right-of-way.

- Allow local governments to add “farm family business” as an allowable use in the farmland preservation district, or enable the limit of four employees under s. 91.01(1)(d) to apply only to non-family members.
- Define “substantially consistent.”
- Adjust the zoning ordinance map requirements so that the rule does not read as though the department is requiring a local government to create a separate map just for farmland preservation – the farmland preservation district should be one of the districts listed on the zoning ordinance map.
- Do not request on an application for a farmland preservation agreement that landowners detail which lands they own inside an agricultural enterprise area that are being excluded from coverage under the proposed agreement.

***DATCP’s Rule Changes in Response to
Public Hearings and Rules Clearinghouse Comments***

The final draft rule does not alter the specification that the rationale be primarily based on characteristics of the land itself. This provision serves to ensure that the farmland preservation plan is developed in a manner consistent with the farmland preservation program goals. The final draft rule allows for the department to consider certifying a farmland preservation zoning ordinance that is between 70 and 80% consistent with a farmland preservation plan if the local government can demonstrate to the Secretary’s satisfaction that there is a reasonable, objective justification for the lower level of consistency.

Instead of requiring the landowner to specify which lands are excluded from a farmland preservation agreement application and provide a reason for excluding those lands, the final draft rule provides that the department may deny an application if it determines that the agreement would conflict with the goals of the agricultural enterprise area program or will impair or limit agricultural uses on other lands in the agricultural enterprise area.

The final draft rule adds “farm family business” as an allowable, permitted use in the farmland preservation district, sets a specific consistency standard and provides certain technical adjustments to the planning and zoning mapping requirements.

The Rules Clearinghouse made a number of additional technical comments and DATCP made the necessary changes to the proposed rule to incorporate the Clearinghouse suggestions.

Summary of, and comparison with, existing or proposed federal statutes and regulations.

There are no federal regulations or statutes related to this rule.

Comparison with rules in adjacent states

Michigan, Illinois, and Minnesota have statewide programs in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits. These programs require local governments to engage in planning efforts prior to allowing landowners to enter into these agreements.

Michigan allows farmers to voluntarily enter into a Farmland Development Rights Agreement with the state. In exchange for income tax credits and exemptions from special assessments, landowners agree not to develop the land for a specified number of years.

In Illinois, any single landowner, or two or more contiguous landowners with over 350 acres of land, may form an Agricultural District. The county government is responsible for approving and implementing these areas, however the Illinois Department of Agriculture may advise those county governments interested in forming or expanding these areas. Once land is within an Agricultural District, the area remains protected for ten years. Landowners can request additions to, deletions from, or dissolution of the area. Land within the area is protected from local laws that might restrict farming practices and from special assessments.

In Minnesota, counties outside of the metropolitan area can participate in the Greater Minnesota Agricultural Preserves Program. Counties that want to participate must develop an agricultural land preservation plan for review and approval by the commissioner of the Minnesota Department of Agriculture. The plan must identify land for long-term agricultural use and anticipate expected growth around urbanized areas. The designated areas must be adopted as part of the county's comprehensive plan. Landowners that are located within these areas may then place a restrictive covenant on their land, agreeing to limit the land to agricultural or forestry use. The covenant is recorded on the title to the land. In exchange for agreeing to preserve land for long term agricultural use, the landowner receives property tax credits of \$1.50 per acre, per year.

Summary of factual data and analytical methodologies

To develop this rule, DATCP consulted a group of stakeholders familiar with and potentially affected by the provisions of the rule. DATCP also collected feedback from local government officials who had experience working with, understanding, and implementing the farmland preservation law.

Effect on Small Business

This rule will have a generally positive impact on agriculture-related businesses of all sizes, including farms. This rule will have no negative impact on non-agriculture related businesses. As part of the farmland preservation planning process, counties are required to inventory and evaluate agriculture-related businesses and services, including farm operations, agricultural

production facilities, and enterprises related to agriculture. This process helps to ensure that the impact of farm operations and agriculture-related business can be measured within the community. By clarifying this requirement in the planning process, the rule may aid communities in accurately capturing the impact and breadth of farm operations and agriculture-related businesses within the area.

This rule also provides clarity in the farmland preservation zoning standards, encouraging local governments to include farm operations and agriculture-related enterprises in the zoning district. Farm operations and agriculture-related businesses may be allowed in a farmland preservation zoning district either as an agricultural use, an agriculture-related use, or an accessory use. The rule provides additional flexibility and a positive economic impact to farmers and agricultural business, including small businesses. Though such businesses may or may not claim tax credits, their presence in the district may add additional certainty to farmers also within the certified farmland preservation district, encouraging those farmers to continue to invest in their farm operations.

Next Steps

If the Board approves this final draft rule, DATCP will submit the final draft rule to the Governor's Office of Regulatory Compliance. If the Governor's office approves the final draft rule, DATCP will then submit the rule to the legislature for legislative committee review. If the legislature has no objection to the rule, the DATCP Secretary will sign the final rulemaking order and transmit it for publication. The rule will take effect on the first day of the month following publication.

Appendix A

RULEMAKING HEARING
Hearing Appearances and Testimony

Rule Subject: Wisconsin Farmland Preservation Program
Adm. Code Reference: ATCP 49, Wis. Adm. Code
Rules Clearinghouse #: CR 13-003
DATCP Docket #: 12-R-03

Appleton, Wisconsin
February 14, 2013

Person/Organization	Testified- Yes/No	Written- Yes/No	Registered at Hearing Yes/No	Position/Comments
Chuck Farrey Town of Vinland	Yes	No	Yes	Spoke in opposition of the rule. Participation in the program should be voluntary.
Larry Eberle Town of Rhine	Yes	No	Yes	Spoke in opposition of the rule. Rule should provide information instead of references to statutes.
Jerry Bougie Winnebago County	Yes	Yes	Yes	Registered in support of part and in opposition to part of the rule. Also provided testimony in writing. Stated that the farmland preservation program forces towns to extend town zoning into the County's state mandated shoreland zoning jurisdiction and that the rule should allow town zoning maps to show both the town and county zoning jurisdictions on the same map, basically delineated along the county shoreland border. Also stated that the rule should better reflect that property owners have a choice to voluntarily be included in the program.
Aaron Schuette Brown County	Yes	Yes	Yes	Spoke in opposition of parts of rule. Stated that farmers should have the option of not being included in the program. Provided written questions, below, regarding specific provisions in the rule.

Person/Organization	Testified- Yes/No	Written- Yes/No	Registered at Hearing Yes/No	Position/Comments
Ken Jaworski Martenson & Eisele	Yes	No	Yes	Registered in favor of part and in opposition to part. Stated that recommended criteria for FP plan such as historic use of land was good, however more emphasis should be given to landowner preference. Also questioned whether rule should allow counties to acknowledge local plans as part of criteria.
Glen Schwalbach Town of Rockland	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Gerald Schmidt	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Eric Fowle ECWRPC	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Greg Baneck Outagamie County Land Conservation Department	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Wayne De Bruin Town of Center	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Edith Lauscher Towns of Casco, Pierce, and West Kewaunee	No	No	Yes	Did not register a position on the rule. Included written comment below. Did not register to speak.
Brian Haase Waupaca County LWCD	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Ryan Brown Waupaca County	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Carol Knier	No	No	Yes	Registered in favor of part and in opposition to part of rule. Did not register to speak.
Ray Batley Town of Vinland	No	No	Yes	Did not register a position on the rule. Did not register to speak.
David Johnson Outagamie County	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Milton Krause	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Carla Masten Outagamie County LCD	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Joy Koomen Town of Morrison	No	No	Yes	Did not register a position on the rule. Did not register to speak.

Person/Organization	Testified- Yes/No	Written- Yes/No	Registered at Hearing Yes/No	Position/Comments
Ed Sypek Town of Vinland	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Debbie Vander Heiden Town of Kaukauna	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Kay Lettau	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Bruce Bondow	No	No	Yes	Did not register a position on the rule. Did not register to speak.

**Eau Claire, Wisconsin
February 21, 2013**

Person/Organization	Testified- Yes/No	Written- Yes/No	Registered at Hearing Yes/No	Position/Comments <i>DATCP's Responses are in Parentheses</i>
Amanda Engesether St. Croix County	Yes	No	Yes	Registered in favor of part and opposed to part of rule. Registered to speak. Stated that the rule provision requiring zoning ordinance to zone for farmland preservation 80% of land planned for farmland preservation was too high.
Lance Gurney Eau Claire County	Yes	Yes	Yes	Registered in favor of part and opposed to part of rule. Registered to speak. Written comments included below.
Rod Eslinger Eau Claire County	Yes	No	Yes	Opposed part of rule. Registered to speak. Remove 80% requirement and let communities work toward consistency with the farmland preservation plan.
Gerald Hawkenson Town of Chimney Rock	No	No	Yes	Registered in support of rule. Did not register to speak.
Jackie Hawkenson Town of Chimney Rock	No	No	Yes	Registered in support of rule. Did not register to speak.
Chase Cumming Pepin County	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Thomas Wik	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Steve Hilger	No	No	Yes	Registered in favor of part and opposed to part of rule. Thinks 80% is too high. Did not register to speak.
Greg Leonard	No	No	Yes	Registered in favor of part and opposed

Person/Organization	Testified- Yes/No	Written- Yes/No	Registered at Hearing Yes/No	Position/Comments <i>DATCP's Responses are in Parentheses</i>
Eau Claire County Land Conservation				to part of rule.

**Wausau, Wisconsin
February 26, 2013**

Person/Organization	Testified- Yes/No	Written- Yes/No	Registered at Hearing Yes/No	Position/Comments <i>DATCP's Responses are in Parentheses</i>
Diane Wessel Marathon County	Yes	No	Yes	Spoke in opposition to parts of the rule. Thought the 80% consistency between the plan and the zoning ordinance was too high. Thought the proposed rule language regarding required information in the farmland preservation agreement application would unnecessarily deter landowners from signing agreements.
Melinda Osterberg Shawano County	Yes	No	Yes	Registered in support of rule. Registered to speak. Favored the 80% level of consistency between the plan and the zoning ordinance.
Steve Kunst Shawano County	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Nathan Sandwick	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Larry Lee WSAU Radio	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Katherine Heckendorf	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Becky Frisch Marathon County	No	No	Yes	Registered in support of part and in opposition of part of rule. Did not register to speak.
Dean Johnson Marathon County	No	No	Yes	Registered in support of part and in opposition of part of rule. Did not register to speak.

Madison, Wisconsin
February 28, 2013

Person/Organization	Testified- Yes/No	Written- Yes/No	Registered at Hearing Yes/No	Position/Comments <i>DATCP's Responses are in Parentheses</i>
Dean Perlick Dodge County	Yes	No	Yes	Registered in support of rule. Registered to speak. Requested that the rule allow for counties to define contiguity as ending at a river or road right of way.
Kara Slaughter Wisconsin Farmers Union	Yes	Yes	Yes	Registered in support of rule. Read written comments and submitted comments into hearing record.
Bill Berry American Farmland Trust	Yes	Yes	Yes	Registered in support of rule. Read written comments and submitted comments into hearing record.
Ben Kollenbroich	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Ronald Howard USDA, NRCS	No	No	Yes	Did not register a position on the rule. Did not register to speak.
Paul Benjamin Rock County	No	No	Yes	Registered in support of the rule. Did not register to speak.
Janet Kassel	No	No	Yes	Registered in favor of part and opposed to part of rule. Did not register to speak. Submitted written comment, below.
Rachel Whaley	No	No	Yes	Registered in support of the rule. Did not register to speak. Submitted written comment, below.

Appendix B

Written Testimony ATCP 49, Wis. Adm. Code Wisconsin Farmland Preservation Program

Person/Organization	Comments	Position
Aaron Schuette Brown County	Questioned whether the rule should better accommodate individual landowner preference for participation in the program. Also thought that rule should better account for local planning decisions and not just require the county to impose a farmland preservation plan on the towns. Additionally questioned whether land can be zoned for farmland preservation if not planned, and pointed to the disconnect between a locally administered zoning ordinance and a county administered farmland plan. Finally pointed to the cost burden for towns in creating new digital zoning maps.	Opposes parts of ATCP 49, particularly provision clarifying appropriate criteria to use in developing rationale for identifying farmland preservation area.
Edith Lauscher Towns of Casco, Pierce, West Kewaunee	Unhappy that the Town of Casco Farmland Preservation Zoning Ordinance was only certified by the department for two years.	Opposed to agency's actions unrelated to ATCP 49.
Janet Kassel Town of Janesville	Requested that the rule list farm family business as an allowable use in the farmland preservation zoning district to enable farm owners to gain added income on their farm and not have to track family members as employees on the farm.	Supports rule in part but requests the rule language allow for family members to not be restricted in home occupations that otherwise qualify as an accessory use.
Nancy Anderson Southeastern Wisconsin Regional Planning Commission	Requested that a maximum scale of 1 inch = 1,000 feet be set, instead of 1 inch = 2,000 feet so that more detailed information can be shown and possibly setting a minimum scale such as 1 inch = 4,000 feet. Requested that rule language be adjusted so that a local government does not have to create both a zoning ordinance map and a separate farmland preservation map and then try to follow and update both maps.	Indicates neither support nor opposition, only requests adjustments to mapping provision language.
Brian Ohm Professor Department of Urban & Regional Planning University of Wisconsin-Madison	1. Define "substantially consistent" and clarify whether this establishes a higher or lower threshold for determining whether an ordinance is consistent with a plan. 2. Clarify whether written management plan under forest management is any type	Indicates neither support nor opposition, only requests clarification of certain language.

Person/Organization	Comments	Position
	<p>of written plan or only a certified forest management plan prepared under the state's Managed Forest Law.</p> <p>3. Rewrite the definition of "Utility use" as "Utility use includes solar power, coal power, natural gas-fired generation facilities, and wind turbines.</p> <p>4. Plan map could be comprised of either one county map or a series of town, village, and city maps -- not one county map or a series of just town maps.</p> <p>5. Define "Political subdivision" and use city, town, or village in a consistent order.</p>	
<p>Rachel Whaley, Keller Williams Realty; Tobi Silgman, Keller Williams Realty; Kelly Maly, The Kruse Company; Julie Bailey, First Weber Group; Barry Mirkin, Restaino & Associates; Troy Theil, Keller Williams Realty; Karen Theil, Keller Williams Realty; Jenny Persha, Keller Williams Realty; Ben Anton, Keller Williams Realty; Claudine Liendau, North Shore Homes Inc; Valerie Tourangeau, East Valley Green Homes; Stuart Utley, First Weber Group</p>	<p>Support the preservation of farmland.</p>	<p>Supports ATCP 49.</p>
<p>James Seefeldt, Chair Land Conservation</p>	<p>Recognize the importance of supporting the statute through administrative code.</p>	<p>Oppose part of ATCP 49, specifically provision clarifying the</p>

Person/Organization	Comments	Position
and Zoning Committee; Elroy Zemke, Chair Environmental Resources Committee; Gary Wyman, Chair Board of Supervisors Marathon County	Rule language stating consistency with farmland preservation plan is too restrictive and may prove to be a disincentive for communities to participate in farmland preservation zoning. Communities should be allowed to zone 51% of farmland preservation areas for initial certification and be given 5 years to achieve the 80% participation rate. Also requests that department staff ensure there is adequate staff funding and landowner income tax credits available for the program since success is dependent on state and county policy makers and staff supporting towns and farmers.	consistency requirement between the farmland preservation plan and farmland preservation zoning ordinance.
Carol Johnson	Support farmland preservation rule, particularly the ability to place wind turbines on agricultural land.	Supports ATCP 49.
Bryan Meyer, Chair Town of Milton	Concerned with the burden that farmland preservation has on towns, including the cost and time that is required to amend and administer town ordinances.	Indicates opposition to farmland preservation, but not specifically ATCP 49.
Gladys Vogel Farmer with land in the towns of Jefferson and Aztalan	Support farmland preservation zoning.	Supports ATCP 49.
Lance Gurney Eau Claire County	Support farmland preservation rule, but reiterates concern with 80% consistency between the farmland preservation plan and zoning ordinance.	Supports ATCP 49 but opposes consistency provision.
Ellen Denzer St. Croix County	Believes 80% provision is too restrictive. Writes that the department has been erratic in its consistency requirement. Also thinks that the density and ratio standards in the nonfarm residence provision of the statutes are two very different concepts and are not compatible with the county's development activity. The county was not clear that it had to follow both density and ratio standards and thought it needed to follow one or the other. Also believes that the maximum number of nonfarm residences allowed on a farm with a CUP unfairly penalizes larger farm owners. Finally, thinks that the rule should clearly identify agriculture-related uses as integral to	Opposes parts of ATCP 49 and opposes parts of farmland preservation unrelated to the rule.

Person/Organization	Comments	Position
	agriculture without encouraging extensive commercial activities.	
Bill Berry American Farmland Trust	Support farmland preservation.	Supports ATCP 49.
Kara Slaughter Wisconsin Farmers Union	Support farmland preservation.	Supports ATCP 49.

**PROPOSED ORDER
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION CREATING AND
ADOPTING RULES**

- 1 The Wisconsin department of agriculture, trade and consumer protection proposes the following
2 rule *to create* ch. ATCP 49 *relating to* Wisconsin's farmland preservation program and affecting
3 small business.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

Statutes Interpreted

Statutes Interpreted: ch. 91, Stats.

Statutory Authority

Statutory Authority: ss. 91.02, and 93.07 (1), Stats.

Explanation of Statutory Authority

DATCP has specific and general authority to establish rules interpreting and clarifying provisions of ch. 91, the farmland preservation program. DATCP has general authority for promulgating rules under s. 93.07 (1), for all of its program areas, and under s. 91.02 for the administration of ch. 91, Stats. Under s. 91.02 (1), DATCP has specific authority to set forth technical specifications for farmland preservation zoning maps under s. 91.38 (1) (d). DATCP has specific authority under s. 91.02 (2) to identify additional uses that would qualify as accessory uses, agricultural uses, agriculture-related uses, and base farm tracts. DATCP also has specific authority under s. 91.02 (2) to specify requirements for certifications of farmland preservation plans under s. 91.18 (1) (b) as well as farmland preservation zoning ordinances under s. 91.38 (1) (i). Section 91.02 (2) also gives DATCP specific authority to require information in an application for certification of a farmland preservation plan or amendment under s. 91.20 (4) or zoning ordinance under s. 91.40 (5), and to specify the types of ordinance amendments for which certification is required under s. 91.36 (8) (b) 3. DATCP has authority under s. 91.02 (2) to authorize additional uses in a farmland preservation zoning district under s. 91.42 (4), including additional uses allowed as permitted uses under s. 91.44 (1) (g) and as conditional uses under s. 91.46 (1) (j). Finally, DATCP has the authority under s. 91.02 (2) to

require information in an application for a farmland preservation agreement under s. 91.64 (2) (h).

Related Statutes and Rules

Chapter 91 governs the state's farmland preservation program. Landowners who participate in the zoning or farmland preservation agreement provisions of the program are eligible for farmland preservation tax credits under s. 71.613, Stats. Under ss. 91.80 and 91.82, Stats., landowners claiming those tax credits are required to comply with soil and water conservation standards promulgated by the department under ss. 92.05 (3) (c) and (k), 92.14 (8), and 281.16 (3) (b) and (c), Stats. Those standards are found primarily in ch. ATCP 50, Wis. Adm. Code, as well as the Department of Natural Resources performance standards under ss. NR 151.02 to 151.08, Wis. Adm. Code.

Plain Language Analysis

Background

Wisconsin's Farmland Preservation Program (FPP), ch. 91, Stats., was repealed and recreated under 2009 Wis. Act 28. Chapter 91, Stats., was updated to acknowledge the growing pressures on farmland across the state and to curb the increasing conversion of farmland out of agricultural use.

The farmland preservation law requires all counties to update their farmland preservation plans before January 1, 2016. The farmland preservation planning process ensures that local governments evaluate the agricultural land within their boundaries and consider the role that agriculture plays in their local economy. Counties must submit farmland preservation plans to DATCP for certification. In order to be certified by DATCP, the plan must meet certain requirements under ch. 91, Stats. Once a plan is certified, land that is identified as part of a farmland preservation area is then eligible for other parts of the FPP.

One such part of the FPP is farmland preservation zoning. Local governments may choose to adopt farmland preservation zoning ordinances to protect farmland. Similar to farmland preservation plans, zoning ordinances must also be submitted to the department for certification. To be certified, the ordinance must meet certain requirements under ch. 91, Stats. The certification process ensures that only compatible uses are allowed in the farmland preservation district to limit pressures on active agriculture created by the presence of incompatible uses. Once certified, landowners are eligible to claim farmland preservation tax credits.

Another component of the FPP is the farmland preservation agreement. Under ch. 91., Stats., any new agreement must cover land located in a landowner-initiated and state-designated Agricultural Enterprise Area (AEA). Landowners with farmland preservation agreements are eligible to collect farmland preservation tax credits. By clustering agreements in areas that are primarily devoted to agricultural use, farmland can be better protected because a concentration of agriculture provides landowners with the confidence that the surrounding land will remain in agriculture. This confidence encourages landowners not only to continue farming, but to make additional investments in their agricultural operations.

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This rule does all of the following:

- Creates ch. ATP 49.
- Adds to definitions listed under s. 91.01, Stats., and further clarifies certain terms in ch. 91.
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This rule:

- Makes clear the types of uses that may be listed by a political subdivision as accessory uses and agriculture-related uses.
- Defines several terms including crops and forest management.
- Adds a definition of base farm tract to provide political subdivisions flexibility in administering this density restriction if they choose to utilize it.

Farmland Preservation Plans

This rule:

- Reiterates the statutory requirement that, unless a county obtains certification of a new farmland preservation plan by December 31 of the year following the expiration date of the county plan, the department may withdraw certification of any farmland preservation zoning ordinances within the county.
- Explains the circumstances under which a county may receive an extension to the expiration of their farmland preservation plan to facilitate coordination with other planning and zoning efforts that may be occurring in the county.
- Reiterates the statutory requirement that any amendment to a certified farmland preservation plan must be submitted to the department for certification.
- Provides that the rationale used for identifying the farmland preservation area must be based on objective criteria. Describes the relationship between the farmland preservation plan and any county's comprehensive plan.
- Provides technical specifications for the farmland preservation plan map and states that the county must provide the department with the data used to create the map.

Farmland Preservation Zoning

This rule:

- Provides that nonfarm residences existing at the time an ordinance is certified may be considered permitted uses rather than prior nonconforming uses.
- Authorizes single-family and duplex nonfarm dwellings as conditional uses subject to density restrictions that are as restrictive as the density standards under ch. 91, Stats.
- Clarifies the statutory provision that an ordinance certification expires according to the statutory schedule in s. 91.34, Stats., and a political subdivision has until December 31 of the year following the expiration date to have its ordinance certified by the department to prevent landowners from losing eligibility to claim farmland preservation tax credits.
- Clarifies the statutory provision that authorizes a local government to request an extension to the expiration of its farmland preservation zoning ordinance certification to facilitate coordination with other planning and zoning efforts that may be occurring in the town or county.
- Describes the relationship between a political subdivision's farmland preservation zoning ordinance and the county's farmland preservation plan.
- Provides technical specifications for the farmland preservation zoning map and states that the political subdivision must provide the department with the data used to create the map.
- Specifies that the department may withdraw certification of an ordinance if the county farmland preservation plan expires or if the political subdivision adopts an ordinance that fails to comply with ch. 91, Stats.
- Specifies when an amendment to a farmland preservation zoning ordinance must be submitted to the department for certification.

Farmland Preservation Agreements

This rule:

- Provides that the department may deny a farmland preservation agreement application if the department determines that lands to be excluded from the proposed agreement are withheld for purposes that conflict with the goals of the Agricultural Enterprise Area, or are withheld for purposes that will likely impair or limit agricultural use on other lands in the Agricultural Enterprise Area or lands proposed for inclusion under a farmland preservation agreement.

Summary of, and comparison with, existing or proposed federal statutes and regulations.

There are no federal regulations or statutes related to this rule.

Comparison with rules in adjacent states

Michigan, Illinois, and Minnesota have statewide programs in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits. These programs require local governments to engage in planning efforts prior to allowing landowners to enter into these agreements.

Michigan allows farmers voluntarily to enter into a Farmland Development Rights Agreement with the state. In exchange for income tax credits and exemptions from special assessments, landowners agree not to develop the land for a specified number of years.

In Illinois, any single landowner, or two or more contiguous landowners with over 350 acres of land, may form an Agricultural District. The county government is responsible for approving and implementing these areas, however the Illinois Department of Agriculture may advise those county governments interested in forming or expanding these areas. Once land is within an Agricultural District, the area remains protected for ten years. Landowners can request additions to, deletions from, or dissolution of the area. Land within the area is protected from local laws that might restrict farming practices and from special assessments.

In Minnesota, counties outside of the metropolitan area can participate in the Greater Minnesota Agricultural Preserves Program. Counties that want to participate must develop an agricultural land preservation plan for review and approval by the commissioner of the Minnesota Department of Agriculture. The plan must identify land for long-term agricultural use and anticipate expected growth around urbanized areas. The designated areas must be adopted as part of the county's comprehensive plan. Landowners that are located within these areas may then place a restrictive covenant on their land, agreeing to limit the land to agricultural or forestry use. The covenant is recorded on the title to the land. In exchange for agreeing to preserve land for long term agricultural use, the landowner receives property tax credits of \$1.50 per acre, per year.

Summary of factual data and analytical methodologies

To develop this rule, DATCP consulted a group of stakeholders familiar with and potentially affected by the provisions of the rule. DATCP also collected feedback from local government officials who had experience working with, understanding, and implementing the farmland preservation law.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of the Economic Impact Analysis

This rule will not have a significant fiscal impact on state government and will have no significant negative fiscal effect on local governments or public utility rate payers. To determine the potential economic impact of the rule, the department posted the rule on the department

website and the state of Wisconsin administrative rules website, and contacted appropriate organizations to solicit information and advice from businesses, business sectors, associations, local governmental units, and individuals that may be affected by the proposed rule.

Effect on Small Businesses

This rule will have a generally positive impact on agriculture-related businesses of all sizes, including farms. This rule will have no negative impact on non-agriculture related businesses. As part of the farmland preservation planning process, counties are required to inventory and evaluate agriculture-related businesses and services, including farm operations, agricultural production facilities, and enterprises related to agriculture. This process helps to ensure that the impact of farm operations and agriculture-related business can be measured within the community. By clarifying this requirement in the planning process, the rule may aid communities in accurately capturing the impact and breadth of farm operations and agriculture-related businesses within the area.

This rule also provides clarity in the farmland preservation zoning standards, encouraging local governments to include farm operations and agriculture-related enterprises in the zoning district. Farm operations and agriculture-related businesses may be allowed in a farmland preservation zoning district either as an agricultural use, an agriculture-related use, or an accessory use. The rule provides additional flexibility and a positive economic impact to farmers and agricultural business, including small businesses. Though such businesses may or may not claim tax credits, their presence in the district may add additional certainty to farmers also within the certified farmland preservation district, encouraging those farmers to continue to invest in their farm operations.

Agency Contact Person

Questions and comments related to this rule may be directed to:

Alison Volk
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone: (608)224-4634
E-Mail: alison.volk@wi.gov

Note: These “agriculture-related uses” may include facilities to: provide agricultural supplies, equipment, fertilizers, pesticides or other agricultural inputs or services to farms; store, process, handle, or market raw agricultural commodities; slaughter or process livestock that were primarily kept off-site; or process agricultural by-products or wastes produced primarily off-site. A manure digester, bio-fuel facility or other facility that produces energy for use primarily off-site may also be considered an agriculture-related use.

(c) A facility used for providing veterinary services primarily to livestock, including the sale of supplies and pharmaceuticals related to animal husbandry.

(3) “Base farm tract” means one of the following:

(a) A tract of land as defined in s. 91.01(5)(a), Stats.

(b) All land, whether or not the parcels are contiguous, that is in a farmland preservation zoning district under the same zoning ordinance and that is part of a single farm on the date that the owner of the farm first creates a new lot or parcel from that farm, regardless of any subsequent changes in the size of the farm. All land, at the time of the creation of the new lot or parcel by the owner, is considered part of the same base farm tract, including the newly created lot or parcel.

Note: Under this provision, the political subdivision may now choose to define “base farm tract” in any of the following ways: 1) all contiguous parcels in single ownership under the same zoning ordinance, *on the date the department first certifies* the ordinance, 2) all contiguous parcels in single ownership under the same zoning ordinance *on a date, specified in the ordinance, which occurred before the department first certifies* the ordinance, or 3) all parcels in single ownership under the same zoning ordinance *on the date the owner first creates a new lot or parcel*, which occurs *after* the department first certifies the ordinance. The political subdivision must choose one of these ways of defining “base farm tract” in its ordinance, and any further subdividing or ownership transfers does not affect that determination.

(4) “Communications use,” as used in s. 91.46(1)(f), includes transmission lines, cell towers, antennae and broadcast towers.

(5) “Consistent with” means furthers or does not contradict objectives, goals, and policies in a relevant document.

1 **Note:** This definition is similar to that found in s. 66.1001 (1) (am), Stats., for the
2 comprehensive planning program. Under s. 91.10 (2), Stats., the farmland
3 preservation plan is required to be “consistent with” the county’s comprehensive
4 plan.
5

6 **(6)** “Contiguous” means adjacent to or sharing a common boundary.

7 **Note:** A political subdivision may choose to define “contiguous” lands as including
8 lands separated by a road, stream or section line, or as not including those
9 separate lands. Contiguity is defined under s. 91.84(1)(e)3., Stats., specifically for
10 the Agricultural Enterprise Area program.

11 **(7)** “Crop” means a cultivated plant that includes any of the following:

12 (a) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes, and dry beans.

13 (b) Fruits, including apples, grapes, cranberries, cherries, and berries.

14 (c) Vegetables, including tomatoes, carrots, sweet corn, and squash.

15 (d) Plants raised for culinary, medicinal, or aesthetic purposes, including herbs and
16 spices, ginseng, and ornamental shrubs and trees.

17 (e) Plants raised for energy production, including switchgrass, or textile use, including
18 cotton or bamboo.

19 **(8)** “Department” means the state of Wisconsin department of agriculture, trade and
20 consumer protection.

21 **(9)** “Drainage use,” as used in s. 91.46 (1) (f), includes drainage ditches and drains, as
22 defined in s. 88.01 (8), Stats.

23 **(10)** “Electric transmission use,” as used in s. 91.46 (1) (f), includes high voltage lines
24 and electric substations.

25 **(11)** “Farm family business” means a business operated by the owner or operator, or
26 resident family member of the owner or operator, of a farm, that is not associated with an
27 agricultural use, that requires no buildings, structures, or improvements other than those
28 described in s. 91.01(1)(a) or (c), that employs no more than 4 full-time non-family employees

1 annually, and that does not impair or limit the current or future agricultural use of the farm or of
2 other protected farmland.

3 (12) "Forest management," as used in s. 91.01 (2) (a) 7., means private forest lands and
4 woodlands managed in accordance with any type of written management plan, including a plan
5 prepared under the state's managed forest law.

6 **Note:** This includes land that is designated as managed forest land under a forest tax
7 program established in ss. 77.80 to 77.91, Stats. Though active agricultural land
8 may not qualify for the managed forest law program under ss. 77.82(1)(b)1 and
9 77.875, Stats., land covered by the managed forest law program can qualify as an
10 agricultural use for the purposes of the farmland preservation program. A
11 wooded lot that is not actively managed under a written management plan may be
12 included in a farmland preservation zoning district as an open space or natural
13 resource area but may not be included as an agricultural use. Government-owned
14 woodlands may also be included as an open space or natural resource area.

15
16 (13) "Governmental use," as used in s. 91.46(1)(g), includes community centers, police
17 and fire facilities, public parks and town halls.

18 (14) "Pipeline use," as used in s. 91.46(1)(f), includes oil and gas pipelines.

19 (15) "Political subdivision" has the meaning given in s. 91.01(24), Stats.

20 (16) "Secretary" means the secretary of the department of agriculture, trade and
21 consumer protection.

22 (17) "Spatial location data" means data referenced to a specific coordinate system that
23 identifies the boundaries and spatial extent of parcels of land included in a farmland preservation
24 area or a farmland preservation zoning district.

25 (18) "Transportation use," as used in s. 91.46 (1) (f), includes roads and rail facilities.

26 (19) "Utility use," as used in s. 91.46 (1) (f), includes facilities for the generation of
27 electricity from sunlight, wind, coal or natural gas.

28 SUBCHAPTER II

1 FARMLAND PRESERVATION PLANS

2 **ATCP 49.10 Farmland preservation plan certification. (1) CERTIFICATION**

3 EXPIRATION. The certification of a farmland preservation plan expires on the date provided in
4 the most recent certification of the plan or its amendment, or, if the certification does not provide
5 an expiration date, on the date provided under s. 91.14, Stats. If a county with an expired plan
6 does not obtain certification of a farmland preservation plan by December 31 of the year
7 following the certification expiration date of the plan, the department may withdraw certification
8 of any zoning ordinances within the county under the procedures in s. ATCP 49.29, effective on
9 December 31 of the year following the year of plan expiration.

10 **Note:** If a county plan expires on December 31, 2014, the county has until December 31,
11 2015, to obtain certification of the plan by the department. If the plan is not
12 certified by the department by December 31, 2015, the department may withdraw
13 certification of any zoning ordinances in the county, effective December 31, 2015.
14 Under s. 71.613 (1) (h) 2., the landowners with land in these farmland preservation
15 zoning districts could not claim tax credits on those lands for the tax year 2015,
16 since certification must be in effect on the last day of the calendar year in order for
17 a plan to be considered certified. The county is not precluded from seeking future
18 certification of its farmland preservation plan.
19

20 **(2) CERTIFICATION EXPIRATION EXTENSION.** The secretary may delay the expiration date
21 of the certification of a county's farmland preservation plan for up to 2 years upon a written
22 request from the county demonstrating to the secretary's satisfaction that a delay would allow the
23 county to coordinate the farmland preservation planning process with other planning or zoning
24 efforts in the county.

25 **(3) AMENDMENTS AND CERTIFICATION.** If, after July 1, 2009, a county amends a
26 farmland preservation plan in accordance with s. 66.1001 (4), Stats., the amendment shall be
27 submitted to the department for certification.

28 **Note:** Under s. 91.16 (8), Stats., amendments are not effective unless certified by the
29 department.
30

1 **ATCP 49.12 Certification standards.** The department may certify a county's farmland
2 preservation plan under s. 91.16, Stats., if that plan complies with the requirements in s. 91.10
3 (1) and (2), Stats., and all of the following:

4 **(1) RATIONALE.** (a) The farmland preservation plan shall describe the rationale used to
5 determine which areas the county plans to preserve for agricultural use and agriculture-related
6 use. The rationale shall be based on objective criteria related to the characteristics of the land
7 parcels themselves, including consideration of all of the following criteria:

- 8 1. Whether the soils are suitable for agricultural production.
- 9 2. Whether the land has historically been used for agricultural use or agriculture-related
10 use.
- 11 3. Whether the land is in close proximity to agricultural infrastructure.
- 12 4. Whether the land is in undeveloped natural resource or open space areas that connect
13 other farmland parcels to create a large, uninterrupted block of preserved area.
- 14 5. Whether the land may be under some development pressure but the land is not located
15 in an area the county plans for development in the next 15 years.

16 Note: The criteria listed above are all land-based considerations that may or may not be
17 relevant in the county. Other factors may also be considered such as availability
18 of supporting infrastructure or presence of protected land.

19 (b) The rationale shall exclude from a farmland preservation area any parcels planned,
20 within 15 years, for nonagricultural development or other incompatible uses in the town or
21 county comprehensive plans.

22 (c) The rationale may not be based primarily on landowner preferences.

23 (d) The rationale shall be applied consistently across the county to the extent applicable
24 and practicable.

(e) The farmland preservation plan map shall accurately reflect the rationale utilized by the county.

Note: Utilizing objective criteria means that the criteria must be applied impartially and not favor some landowners over other landowners. The criteria should be based on characteristics associated with the land itself or existing pressures that may affect the future use of the land instead of focusing solely on the preferences of individual landowners.

(2) RELATIONSHIP TO THE COUNTY COMPREHENSIVE PLAN. (a) The farmland preservation plan shall be consistent with any county comprehensive plan.

Note: To be "consistent with" does not mean that the farmland preservation plan and the comprehensive plan must be identical; however, for the department to find that the plans are consistent there should not be any significant difference between elements of the plans. For example, not every area that is shown as an agricultural area in the comprehensive plan future land use map must be included as a farmland preservation area in the farmland preservation plan map; however, lands planned for residential or non-agricultural commercial use in the comprehensive plan should not be planned for farmland preservation in the farmland preservation plan within the next 15 years.

(b) The farmland preservation plan shall be included in any county comprehensive plan.

Note: Under s. 91.10 (2), Stats., the county is required to include the farmland preservation plan in any county comprehensive plan it adopts. Under s. 91.18, Stats., the farmland preservation plan is not qualified for certification by the department if pars. (a) and (b) are not met.

(3) PLAN INELIGIBLE FOR CERTIFICATION. The department may not certify a farmland preservation plan that does not meet the requirements of ch. 91, Stats., and this subchapter.

ATCP 49.14 Applying for certification of a plan or a plan amendment.

(1) GENERAL. A county seeking certification of its farmland preservation plan or a plan amendment shall submit an application to the department as provided in this section.

(2) REQUIRED INFORMATION. The application for certification shall include all of the following in order to be considered complete and to be evaluated for compliance with s. 91.16, Stats.:

1 (a) An application on a form developed by the department that includes the information
2 required under ss. 91.20 (2) and (3), Stats.

3 **Note:** You may obtain a copy of the form by contacting the department at the following
4 address:

5
6 Department of Agriculture, Trade and Consumer Protection

7 Attn: Bureau of Land and Water Resource Management

8 2811 Agriculture Drive

9 Madison, WI 53718

10 Website:

11 http://datcp.wi.gov/Environment/Working_Lands_Initiative/Farmland_Preservation_Planning/index.aspx
12
13

14 (b) All parts of the plan for which the County is seeking certification. A county seeking
15 certification of a full plan shall submit the text and map of the plan along with the spatial
16 location data used to create the farmland preservation plan map. A county seeking certification
17 of an amendment to a certified plan shall submit all parts of the plan affected by the amendment.

18 **Note:** A county seeking certification of a plan amendment only needs to submit those
19 parts of the plan that are affected by the amendment. If a county wishes to amend
20 the text of its farmland preservation plan, then the county may submit just the
21 plan text. If a county wishes to amend the plan map, then the county may submit
22 just the plan map. If the amendment makes changes to both the plan map and
23 text, then the county should submit both the map and the text.

24 (c) All spatial location data used to delineate the farmland preservation areas proposed
25 for certification, submitted in accordance with the department requirements on format.

26 (3) PLAN TEXT. The plan text shall comply with the requirements in ss. 91.10 (1) and (2),
27 Stats., and this subchapter.

28 (4) PLAN MAP. A farmland preservation plan shall include a map that clearly delineates
29 all areas in the county identified as a farmland preservation area so that a reader can determine
30 whether a parcel is within an identified area. The farmland preservation plan map shall:

31 (a) Be comprised of one county map or a series of town, village, and city maps.

(b) Be titled "Farmland Preservation Plan Map" followed by the name of the political subdivision depicted on the map.

(c) Specify the county in which the farmland preservation plan area is located.

(d) Clearly delineate areas designated for farmland preservation, designating parcels as included or excluded from the district and following parcel boundaries where possible.

(e) Display environmental or other overlay areas, if any, in a manner that does not obscure or confuse the boundaries of an underlying farmland preservation area.

(f) Be drawn at a scale no greater than one inch to 2,000 feet (1:24,000).

Note: The county may fulfill this requirement by submitting maps at that required scale only for the towns which are to include farmland preservation areas.

(g) Show political boundaries, parcel boundaries, section lines, section numbers, roads, and water bodies.

(h) Include a map legend with corresponding symbols or colors for all data represented on the map.

(i) Identify farmland preservation areas and non-farmland preservation areas with corresponding symbols in the legend and with titles that correspond to the titles in the plan text that apply to those areas.

(j) Specify map scale, north arrow direction, map date, and map producer.

SUBCHAPTER III

FARMLAND PRESERVATION ZONING

ATCP 49.20 General. A political subdivision may adopt a farmland preservation zoning ordinance. In order for the ordinance to be certified by the department under s. 91.36, Stats., the ordinance must meet the requirements of s. 91.38, Stats., and this subchapter.

1 **ATCP 49.22 Permitted uses.** In addition to the uses listed under s. 91.44 (1), Stats.,
2 the following uses may be allowed as permitted uses in a certified district:

3 **(1) EXISTING RESIDENCE.** Residences, regardless of occupancy, existing as of the
4 effective date [LRB inserts date] or an earlier date specified by the ordinance may be permitted.

5 **Note:** Residences, which may or may not be associated with a farm, that are constructed
6 as of a date specified in the zoning ordinance text may be allowed as permitted
7 uses in the district. These residences need not receive a conditional use permit
8 unless the local government decides to require it and they need not follow the
9 prior nonconforming use provisions found under s. 59.69 (1), 60.61 (5), or 62.23
10 (7) (h), Stats., unless mandated by the local government.

11 **(2) FARM FAMILY BUSINESS.**

12 **ATCP 49.23 Conditional uses.** In addition to the uses listed in s. 91.46, Stats., and
13 ATCP 49.22, a proposed new single-family or duplex nonfarm dwelling may be allowed as a
14 conditional use in a certified farmland preservation district. The new nonfarm dwelling is
15 subject to legal restrictions established by the political subdivision which demonstrate to the
16 department's satisfaction that the restrictions will be as restrictive as the density standards for
17 nonfarm residences set forth in s. 91.46 (2), Stats.

18 **Note:** A political subdivision that chooses to allow limited nonfarm residences within the
19 certified farmland preservation district may choose to implement the base farm
20 tract concept defined in s. 91.01 (5), Stats., and applied through s. 91.46 (2) (c) 1.
21 and 2., Stats., or may utilize an alternative provision developed at the local level.
22 The political subdivision must demonstrate to the Secretary that the local
23 provision limits nonfarm development to the same extent or more as the state
24 statutes so that the alternative policy would not allow for both additional nonfarm
25 residences to be built and more nonfarm residential acreage to be introduced into
26 the farmland preservation district. The political subdivision may choose to apply
27 a density restriction to all parcels in the district regardless of whether the parcels
28 qualify as farms under the definition of farm in the ordinance. The conditional
29 use permit for a nonfarm residence is an optional provision that a political
30 subdivision may choose to include in a farmland preservation zoning ordinance.

31 **ATCP 49.24 Zoning ordinance certification expiration. (1) CERTIFICATION**
32 **EXPIRATION.** The certification of a farmland preservation zoning ordinance expires on the date

provided in the most recent certification of the ordinance or its amendment, or, if the certification does not provide an expiration date, on the date provided under s. 91.34, Stats. If a local government with an expired ordinance does not obtain certification of a farmland preservation zoning ordinance by December 31 of the year following the expiration date, landowners covered by the zoning ordinance are not eligible to claim farmland preservation tax credits beginning in the year following the year of the expiration date.

Note: If a farmland preservation zoning ordinance expires on December 31, 2014, the political subdivision has until December 31, 2015, to obtain certification of its ordinance by the department. If the political subdivision's ordinance is not certified by the department by December 31, 2015, all landowners with land located in the farmland preservation zoning district may not claim tax credits for tax year 2015. The political subdivision is not precluded from seeking future certification of its farmland preservation zoning ordinance.

(2) CERTIFICATION EXPIRATION EXTENSION. The secretary may delay the expiration date of the certification of a farmland preservation zoning ordinance for up to 2 years upon a written request from the political subdivision demonstrating to the secretary's satisfaction that a delay would allow the political subdivision to coordinate updating the farmland preservation zoning ordinance with other planning efforts in the political subdivision.

ATCP 49.25 Certification standards. (1) QUALIFYING FOR CERTIFICATION. The department may certify a farmland preservation zoning ordinance under s. 91.36, Stats., if that ordinance complies with the requirements in ss. 91.38 and 91.40, Stats., and this subchapter.

(2) CONSISTENCY WITH FARMLAND PRESERVATION PLAN. At least 80% of the area planned for farmland preservation in each town, city, or village covered by a certified farmland preservation plan shall be included in the farmland preservation district or a district that imposes land use restrictions as restrictive as or more restrictive than the farmland preservation zoning district. The department may consider certifying a farmland preservation zoning ordinance that is between 70 and 80% consistent with a farmland preservation plan if the political subdivision

can demonstrate to the Secretary's satisfaction a reasonable, objective justification for the lower level of consistency.

Note: If an area is planned for farmland preservation but is not zoned for farmland preservation, it may be zoned as open space or conservancy. Such a zoning designation would be consistent with farmland preservation. Areas that are zoned for nonagricultural residential, commercial, or industrial use, however, would not be consistent with farmland preservation.

ATCP 49.26 Applying for ordinance certification. (1) GENERAL. Except as provided under s. 91.36 (8), Stats., and s. ATCP 49.27, a political subdivision seeking certification of its farmland preservation ordinance shall submit an application to the department as provided in this section.

(2) REQUIRED INFORMATION. The application for certification shall include all of the following in order to be considered complete and evaluated for compliance with s. 91.36, Stats.:

(a) An application on a form developed by the department that includes the information required under s. 91.40 (2), Stats.

Note: You may obtain a copy of the form by contacting the department at the following address:

Department of Agriculture, Trade and Consumer Protection
Attn: Bureau of Land and Water Resource Management
2811 Agriculture Drive
Madison, WI 53718

Website:

http://datcp.wi.gov/Environment/Working_Lands_Initiative/Farmland_Preservation_Zoning/index.aspx

(b) All parts of the zoning ordinance affected by the farmland preservation district for which the political subdivision is seeking certification.

(c) All spatial location data used to delineate the farmland preservation zoning districts proposed for certification.

(3) ORDINANCE TEXT. The ordinance text shall comply with the requirements in s. 91.38 (1), Stats.

(4) ORDINANCE MAP. A farmland preservation zoning ordinance shall include a map that clearly delineates each farmland preservation zoning district so that a reader can determine whether a parcel is within a farmland preservation district. The farmland preservation zoning ordinance map shall do all of the following:

(a) Be comprised of one county map or a series of town maps for a county ordinance, or one map for a city, town, or village ordinance.

(b) Be titled "Zoning Ordinance Map" preceded or followed by the name of the political subdivision depicted on the map.

(c) Specify the county in which the farmland preservation zoning district is located, if the map covers only one town, city, or village.

(d) Clearly delineate areas zoned for farmland preservation, designating parcels as included in the farmland preservation district or included in another zoning district and following parcel boundaries to the extent possible.

Note: The zoning district does not need to follow parcel boundaries, although the department prefers that districts follow parcel boundaries. For purposes of the tax credit, landowners covered by the farmland preservation zoning district are responsible for claiming the correct number of acres of land they own that are covered by the farmland preservation district, regardless of whether the political subdivision follows parcel boundaries.

(e) Display environmental or other overlay areas in a way that does not obscure or confuse the boundaries of an underlying farmland preservation zoning district.

(f) Be drawn at a map scale no greater than one inch to 2,000 feet (1:24,000).

Note: For submission of a county ordinance, the county may fulfill this requirement by submitting maps at the required scale only for the towns which are to include farmland preservation districts.

(g) Show political boundaries, parcel boundaries, section lines, section numbers, roads, and water bodies.

(h) Include a map legend that includes corresponding symbols or colors for all data represented on the map.

(i) Identify all mapped farmland preservation districts with titles that correspond to the titles in the zoning ordinance text that apply to those districts.

(j) Specify map scale, north arrow direction, map date, and map producer.

ATCP 49.27 Applying for certification of an ordinance amendment. (1) An amendment to a certified farmland preservation zoning ordinance is automatically considered to be certified as part of the certified farmland preservation zoning ordinance, except as provided in sub. (2).

Note: A political subdivision may submit to the department, at any time, an amendment to a certified farmland preservation zoning ordinance, and request a written determination from the department as to whether the amendment requires certification by the department.

(2) An amendment to a certified farmland preservation zoning ordinance shall be submitted to the department for certification review under s. 91.36, Stats., and s. ATCP 49.26, and is not considered to be automatically certified, if the amendment does any of the following:

(a) Adds uses not previously allowed in the farmland preservation district.

(b) Eliminates findings or conditions that must be met before approving a use for a location in the farmland preservation district.

(c) Increases the number of nonfarm residences or the number of nonfarm acres allowed in the farmland preservation district.

(d) Changes the findings required for allowing a rezone out of a farmland preservation district.

(e) Results in a farmland preservation zoning ordinance map that is no longer meets the requirements of s. ATP 49.25(2).

Note: Changing the numbering or formatting of the ordinance, changing the minimum lot size, rezoning land out of a farmland preservation district unless the rezone would result in a farmland preservation zoning map that no longer meets the specified consistency requirements with the currently certified farmland preservation plan map, or making changes that only affect districts outside of the farmland preservation zoning district do not require certification by the department.

ATP 49.29 Withdrawal of certification. (1) Pursuant to s. 91.36 (8) (c), Stats., the department may by written notice, without prior notice or hearing, withdraw certification of a farmland preservation zoning ordinance under this section. The withdrawal is a summary special order under ch. ATP 1.

(2) The secretary may withdraw certification under sub. (1) if any of the following occur:

(a) The certification of a county farmland preservation plan for the lands under the certified farmland preservation zoning ordinance has expired.

(b) An amendment, adopted after July 1, 2009, to a certified farmland preservation zoning ordinance fails to comply with the requirements of s. 91.38, Stats.

(3) The notice under sub. (1) shall state the reason for the withdrawal of certification.

Note: The department may withdraw certification of an ordinance under this section regardless of the date the ordinance was certified, and regardless of whether the ordinance was developed under the provisions of s. 91.06, 2007 Stats., or ch. 91, Stats., (see s. 91.36 (8) (c), Stats.).

SUBCHAPTER IV

FARMLAND PRESERVATION AGREEMENTS

ATP 49.30 FARMLAND PRESERVATION AGREEMENTS; DENIAL OF APPLICATION.

The department may deny an application to enter into a farmland preservation agreement if any of the following apply:

1 (1) The department determines that lands to be excluded from the proposed agreement
2 are being withheld for purposes that conflict with the goals of the agricultural enterprise area
3 program under s. 91.84, Stats.

4 (2) The department determines that lands to be excluded from the agreement are being
5 withheld for purposes that will likely impair or limit agricultural use on other lands in the
6 agricultural enterprise area or lands proposed for inclusion under a farmland preservation
7 agreement.

8 **SECTION 2. EFFECTIVE DATE:** This rule takes effect on the first day of the month
9 following publication in the Wisconsin administrative register, as provided in s. 227.22 (2)
10 (intro.), Stats.

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: _____
Ben Brancel
Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject: Wisconsin Farmland Preservation Program
Adm. Code Reference: ATCP 49
Rules Clearinghouse #: CR 13-003
DATCP Docket #: 12-R-03

Rule Summary

This rule interprets the Wisconsin Farmland Preservation Program administered by the Department of Agriculture, Trade and Consumer Protection ("DATCP"). Among other things, this rule does all of the following:

General

- Creates ch. ATCP 49.
- Adds to definitions listed under s. 91.01, Stats., and further clarifies certain terms in ch. 91.
- Specifies the application content and process for receiving certification of farmland preservation plans and ordinances.
- Specifies types of ordinance amendments for which certification is required under s. 91.36 (8) (b) 3, Stats.
- Authorizes additional uses allowed in a farmland preservation zoning district.
- Specifies when the department may deny an application for a farmland preservation agreement.

Definitions

- Makes clear the types of uses that may be listed by a political subdivision as accessory uses and agriculture-related uses.
- Defines several terms including crops and forest management.
- Adds a definition of base farm tract to provide political subdivisions flexibility in administering this density restriction if they choose to utilize it.

Farmland Preservation Plans

- Reiterates the statutory requirement that, unless a county obtains certification of a new farmland preservation plan by December 31 of the year following the expiration date of the county plan, the department may withdraw certification of any zoning ordinances in the county.
- Explains the circumstances under which a county may receive an extension to the expiration of their farmland preservation plan to facilitate coordination with other

- planning and zoning efforts that may be occurring in the county.
- Reiterates the statutory requirement that any amendment to a certified farmland preservation plan be submitted to the department for certification.
- Provides that the rationale used for identifying the farmland preservation area must be based on objective criteria. Describes the relationship between the farmland preservation plan and any county comprehensive plan.
- Provides technical specifications for the farmland preservation plan map and states that the county must provide the department with the data used to create the map.

Farmland Preservation Zoning

- Provides that nonfarm residences existing at the time an ordinance is certified may be considered permitted uses rather than prior nonconforming uses.
- Authorizes single-family and duplex nonfarm dwellings as conditional uses subject to density restrictions that are as restrictive as the density standards under ch. 91, Stats.
- Clarifies the statutory provision that an ordinance certification expires according to the statutory schedule in s. 91.34, Stats., and a political subdivision has until December 31 of the year following the expiration date to have its ordinance certified by the department to prevent landowners from losing eligibility to claim farmland preservation tax credits.
- Clarifies the statutory provision which authorizes local governments to request an extension to the expiration of its farmland preservation zoning ordinance certification to facilitate coordination with other planning and zoning efforts that may be occurring in the town or county.
- Describes the relationship between a political subdivision's farmland preservation zoning ordinance and the county's farmland preservation plan.
- Provides technical specifications for the farmland preservation zoning map and states that the political subdivision must provide the department with the data used to create the map.
- Specifies that the department may withdraw certification of an ordinance if the county farmland preservation plan expires or if the political subdivision adopts an ordinance that fails to comply with ch. 91, Stats.
- Specifies when an amendment to a farmland preservation zoning ordinance must be submitted to the department for certification.

Farmland Preservation Agreements

This rule:

- Provides that the department may deny a farmland preservation agreement if the department determines that lands to be excluded from the proposed agreement are withheld for purposes that conflict with the goals of the Agricultural Enterprise Area, or are withheld for purposes that will likely impair or limit agricultural use on other lands in the Agricultural Enterprise Area or lands proposed for inclusion

under a farmland preservation agreement.

Small Businesses Affected

This rule will have a generally positive impact on agriculture-related businesses of all sizes, including farms. This rule will have no negative impact on non-agriculture related businesses. This rule affects businesses in the following ways:

Farmland Preservation Plans

- As part of the farmland preservation planning process, ch. 91, Stats., counties are required to describe the rationale used for determining the farmland preservation area. This rule clarifies that the rationale must be based on objective criteria related to characteristics of the land parcels themselves, including the proximity of parcels to agricultural infrastructure and the historical use of the land for agriculture-related purposes. As part of the farmland preservation planning process, counties are required to inventory and evaluate agriculture-related businesses and services, including agricultural production and enterprises related to agriculture. This process helps to ensure that agriculture-related businesses can be measured within the community and aids counties as they continue to plan for the presence of these businesses.

Farmland Preservation Zoning

- Chapter 91, Stats., allows a political subdivision to locate accessory and agriculture-related uses within a certified farmland preservation district. This rule provides guidance as to the types of uses that may be considered accessory and agriculture-related.
- Accessory uses, under the rule, include facilities for storing, processing, selling, and housing agricultural products. Such uses primarily support agricultural activities occurring on the farm. These uses can make it possible for a farm to generate income through direct-to-consumer sales, such as a roadside farm, or can add value to a product produced on the farm, such as a cheese processing facility. The rule also specifies that an accessory use may include those uses that generate income yet do not conflict with (or may be enhanced by) the farm operation. Listed uses include crop mazes, agricultural tourism, and you-pick operations. The clarification of permissible accessory uses facilitates the inclusion of agricultural businesses, particularly small agricultural businesses, within the farmland preservation district.
- The rule also clarifies that agriculture-related uses include facilities that support agriculture even though the use itself may not be located on a farm. Such uses include facilities that primarily provide agricultural supplies, agricultural equipment, fertilizers, pesticides or other agricultural inputs, or other agricultural services directly to farms. These uses also include manure digesters, facilities that

slaughter livestock, and agricultural processing plants. The rule clarifies that political subdivisions may include within a farmland preservation zoning district businesses that support agriculture. Allowing such businesses to locate within a farmland preservation district helps provide these businesses with a potential customer base and may add additional economic certainty to farmers with land in the certified farmland preservation district.

Farmland Preservation Agreements

This rule clarifies that the department may deny an application for a farmland preservation agreement if the department determines that the agreement would conflict with the goals of the agricultural enterprise area program or would impair or limit agricultural uses on other lands in the agricultural enterprise area.

Reporting, Bookkeeping and other Procedures

The proposed rule does not regulate any small businesses and thus there are no reporting, bookkeeping or other procedures in the proposed rule for small businesses.

Professional Skills Required

The proposed rule does not regulate any small businesses and thus there is no professional skill required for small businesses.

Accommodation for Small Business

Many of the businesses affected by this rule are “small businesses.” This rule does not make special exceptions for small businesses because the farmland preservation program encompasses agricultural operations of all sizes and types, including farms.

This rule includes provisions that will benefit large and small businesses alike, including agriculture-related businesses and farm operations. For example, this rule:

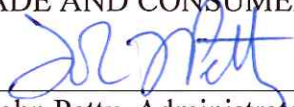
- Requires counties to consider agricultural businesses and farm operations, regardless of size, when determining which lands to plan for farmland preservation.
- Clarifies that certain activities that support and enhance agricultural uses may be located within a farmland preservation zoning district. These activities may include supplemental business ventures that can occur on a farm and help support a small agricultural operation, such as agricultural tourism or seasonal activities.

Conclusion

This rule will generally benefit affected businesses, including "small businesses." Negative effects, if any, will be few and limited. This rule will not have a significant adverse effect on "small business," and is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

Dated this 3rd day of May, 2013.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
John Petty, Administrator
Division of Agricultural Resource Management

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

☐ Original ☒ Updated ☐ Corrected

Administrative Rule Chapter, Title and Number

Ch. ATCP 49, Farmland Preservation

Subject

Wisconsin Farmland Preservation Program

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Chapter 20, Stats. Appropriations Affected

Fiscal Effect of Implementing the Rule

☒ No Fiscal Effect
☐ Indeterminate

☐ Increase Existing Revenues
☐ Decrease Existing Revenues

☐ Increase Costs
☒ Could Absorb Within Agency's Budget
☐ Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

☐ State's Economy

☒ Local Government Units

☒ Specific Businesses/Sectors

☐ Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes ☒ No

Policy Problem Addressed by the Rule

Wisconsin's farmland preservation program, ch. 91, Stats., was repealed and recreated under 2009 Wis. Act 28. There are no rules in effect related to the farmland preservation program. This rule is necessary to provide clarity to counties updating their farmland preservation plans, local governments writing farmland preservation zoning ordinances, and landowners applying for farmland preservation agreements.

The rule does all of the following:

- Creates ch. ATCP 49.
- Adds to definitions listed under s. 91.01, Stats., and further clarifies certain terms in ch. 91.
- Provides guidance for applying for and receiving certification of farmland preservation plans and ordinances.
- Specifies types of ordinance amendments for which certification is required under s. 91.36(8)(b)3, Stats.
- Authorizes additional uses allowed in a farmland preservation zoning district.
- Specifies information required in an application for a farmland preservation agreement under s. 91.64(2)(h).

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

This rule will not have any significant negative economic or fiscal impact on businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole and does not create additional requirements that local governments must follow. Chapter 91, Stats., requires all counties to update their farmland preservation plans before January 1, 2016. Implementing the plan through farmland preservation zoning is optional for local governments. This rule clarifies the requirements under ch. 91, Stats., for completing a farmland preservation plan and a zoning ordinance for those local governments that choose to adopt one. Added clarity will make the certification process of farmland preservation plans and zoning ordinances easier for local governments to understand and complete, and faster for the department to review. This will decrease the overall number of local government and state staff hours necessary to complete the

planning and zoning process.

This rule will have a generally positive impact on agriculture-related businesses of all sizes, including farms. This rule will have no negative impact on non-agriculture related businesses. As part of the farmland preservation planning process, counties are required to inventory and evaluate agriculture-related businesses and services, including farm operations, agricultural production facilities, and enterprises related to agriculture. This process helps to ensure that the impact of farm operations and agriculture-related business can be measured within the community. By clarifying this requirement in the planning process, the rule may aid communities in accurately capturing the impact and breadth of farm operations and agriculture-related businesses within the area.

This rule also provides clarity in the farmland preservation zoning standards, encouraging local governments to include farm operations and agriculture-related enterprises in the zoning district. Farm operations and agriculture-related businesses may be allowed in a farmland preservation zoning district either as an agricultural use, an agriculture-related use, or an accessory use. The rule provides additional flexibility and a positive economic impact to farmers and agricultural business, including small businesses. Though such businesses may or may not claim tax credits, their presence in the district may add additional certainty to farmers also within the certified farmland preservation district, encouraging those farmers to continue to invest in their farm operations.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This rule will clarify statutory requirements, which will alleviate costs at both the state and local level. With added clarity in requirements for planning and zoning certification, local government staff will require less time to complete farmland preservation plans and ordinances while staff at the state level will require less time to review these plans and ordinances. Clarity in the farmland preservation zoning standards may also encourage additional agriculture-related businesses to be included within the farmland preservation zoning district, creating added stability for businesses that may foster agricultural economic development within the district.

If DATCP does not adopt this rule, counties, towns, and municipalities will continue to update their farmland preservation plans and ordinances; however, these local governments would fail to benefit from the guidance and direction that this rule could provide. This lack of guidance may result in added staff time at both the local and state level.

Long Range Implications of Implementing the Rule

Long-term, implementing the rule will benefit local governments, agriculture-related businesses, and agricultural producers. Plans and ordinances are required to be updated at a minimum of every ten years. As a result, this rule will provide needed guidance to local governments both now and into the future. Further clarification of farmland preservation zoning standards will also provide assurance to agriculture-related businesses and agricultural producers that activities supporting agricultural operations will be allowed within the certified district.

Compare With Approaches Being Used by Federal Government

There are no federal regulations or statutes related to this rule.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Michigan, Illinois, and Minnesota have statewide programs in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits. These programs require local governments to engage in planning efforts prior to allowing landowners to enter into these agreements.

Michigan allows farmers to voluntarily enter into a Farmland Development Rights Agreement with the state. In exchange for income tax credits and exemptions from special assessments, landowners agree not to develop the land for a specified number of years.

In Illinois, any single landowner, or two or more contiguous landowners with over 350 acres of land, may form an Agricultural District. The county government is responsible for approving and implementing these areas, but the Illinois Department of Agriculture may advise those county governments interested in forming or expanding these areas. Once land is within an Agricultural District, the area remains protected for ten years. Landowners can request additions to, deletions from, or dissolution of the area. Land within the area is protected from local laws that might restrict farming practices and from special assessments.

In Minnesota, counties outside of the metropolitan area can participate in the Greater Minnesota Agricultural Preserves Program. Counties that want to participate must develop an agricultural land preservation plan for review and approval by the commissioner of the Minnesota Department of Agriculture. The plan must identify land for long-term agricultural use and anticipate expected growth around urbanized areas. The designated areas must be adopted as part of the county's comprehensive plan. Landowners who are located within these areas may then place a restrictive covenant on their land agreeing to limit the land to agricultural or forestry use. The covenant is recorded on the title to the land. In exchange for agreeing to preserve land for long-term agricultural use, the landowner receives property tax credits of \$1.50 per acre, per year.

Comments Received in Response to Web Posting and DATCP Response

The department received comments related to the economic impact of this rule from the Wisconsin REALTORS Association and the Wisconsin Builders Association. Each comment is listed below followed by DATCP's response. After reviewing the comments, DATCP has determined that they do not alter the economic impact analysis of ATP 49. The comments either relate to the impact of ch. 91, Stats., regardless of the presence of an administrative rule or the comments address specific language within the rule itself. As a result, DATCP has encouraged both the Wisconsin REALTORS Association and the Wisconsin Builders Association to submit their comments either orally or in writing during the rulemaking hearing period.

1. Analysis of impact on small businesses is inadequate – The small business impact analysis on pp. 5-6 is inadequate given that it focuses exclusively on agriculture-related business. The analysis does not consider the impact on non-agriculture-related businesses, such as real estate development related businesses. Accordingly, the scope of the analysis should be expanded to include all small businesses.

ATCP 49 will not impact other small businesses such as real estate development related businesses. The rule does not mandate that additional land should be unavailable for development. Instead, the rule clarifies that certain businesses may be included in a certified farmland preservation zoning district. These businesses are necessarily agricultural-related or are incidental to the agricultural use of the farm. As a result, the rule does not impact real estate development related businesses any further than ch. 91, Stats.

2. Housing impact statement requirement not met – Section 227.115 of the Wisconsin Statutes requires the Department of Administration to perform a housing impact report on any administrative rule that affects, among other things, the cost of housing or cost of constructing, rehabilitating, improving or maintaining single family or multifamily dwellings. Because ATP 91 [sic] likely has an impact on the cost of housing by limiting the supply of developable land, a housing impact statement should be prepared as part of the administrative rulemaking process.

ATCP 49 does not limit the supply of developable land any further than ch. 91, Stats. The rule clarifies that the rationale in the farmland preservation plan must be based on objective criteria related to characteristics of the land. One such characteristic is whether the land is under some development pressure even if the land is not located in an area the county plans for development in the next 15 years. Applying such objective criteria would not limit the supply of developable land

because the county could use this determination as a reason for excluding this land from the farmland preservation area. Moreover, the farmland preservation plan itself does not limit whether land may be used for nonagricultural development. The farmland preservation plan is meant to guide future land use decisions, but it is not by itself a land use restriction.

ATCP 49 also requires that a farmland preservation zoning ordinance zones at least 80% of the land that is planned for farmland preservation. The process of farmland preservation planning and then zoning means that the local government has first looked at the land and determined what areas are likely to remain in agricultural use. The 80% zoning requirement then ensures that the local government is treating all agricultural landowners within its jurisdiction equally. If the county has undergone the planning process, then the land that is planned for farmland preservation has already been determined to not be available for development. Thus the 80% rule would not be removing any lands from the pool of lands with the potential to be developed.

3. Application of the "under some development pressure" standard -- With respect to ATCP § 49.12(1)(a)(5) on page 13, lines 9-10, we are not clear on how DATCP will apply the "under some development pressure" standard. If the land is "under some development pressure," should the land be included or excluded from the farmland preservation plan? If the land is under development pressure, the land arguably should be planned for nonagricultural development within the next 15 years and, thus, should not be included in the farmland preservation plan. Moreover, whether land is under some development pressure should not be relevant to the issue of whether it is good farmland.

This comment addresses the clarity of suggested rule language, not the potential economic impact that the rule will have. Consequently, it would be more appropriate to comment on this rule provision during the public hearing period. It should perhaps be noted that leaving the language as it is in the rule would enable counties to treat development pressure either way it chooses. Perhaps a county feels that the presence of some development pressure means that the land is appropriate to be included in the farmland preservation area for now, because inclusion means that the county has some tools available to try to steer development away from this sensitive area. Perhaps another county feels that the presence of even some development pressure makes the likelihood of conversion out of agricultural use too great for the land to be included in the farmland preservation area. Either way, the rule language allows the county to make this determination. The criterion fundamentally emphasizes the need to pay attention to factors at work on the land itself and not primarily the wishes of individual landowners.

4. Failure to consider city and village comprehensive plans -- With respect to ATCP § 49.12(1)(a)(6) on page 13, lines 11-12, this provision requires counties to consider future nonagricultural development and incompatible uses as determined by the county and town comprehensive plans. However, this provision does not require counties to consider nonagricultural development and incompatible uses identified by village and city comprehensive plans. Because comprehensive plans of cities and villages also contain projections for future nonagricultural development and possible uses that are incompatible with agricultural uses, the comprehensive plans of cities and villages should also be considered.

This comment is also more appropriate for the public hearing period because it addresses the substance of the rule itself instead of any potential economic impact that this provision of the rule will have. A request could be made to change the provision to include the comprehensive plans of cities and villages. Whether the department can or should include such language would need to be evaluated after all of the public comments have been collected.

5. Areas to be included in farmland preservation zoning district -- With respect to ATCP § 49.25(2) on page 18, lines 22-23, this provision requires at least 80% of the area planned for farmland preservation to be included in the farmland preservation district or a district that imposes land use regulations that are at least as restrictive as the farmland preservation zoning district. Is this requirement found in Chapter 91 of the Wisconsin Statutes or some other statute? If not, where does it come from?

This question also does not relate to the economic impact of the rule. Any comment regarding the 80% threshold should be made during the public hearing period. We have historically used 80% as a guideline and it is a threshold to which many zoning authorities are already accustomed. Chapter 91 uses the term "substantially consistent." We know that this is much greater than 50%, but not quite 100%. To give local governments additional guidance, we have chosen to codify the already-recognized 80% guideline.